used to date the inception of a cause of action arising from the wrong and the consequent beginning of the period of limitation. If, however, we admit that each day's concealment of the fraud is a new wrong, we would have a new cause of action every day so long as the concealment continued. In the instant case we have evidence of the concealment of the wrong within the statutory period, in the refusal of the defendants to give to the plaintiffs access to the defendant's mine. The Michigan court has decided, in *Groendal* v. *Westrate,* (1912), 171 Mich. 92, that the plaintiff's action for malpractice of her physician was not barred by the statute, although the cause of action arising from the initial negligence of the physician was barred, because within the statutory period he had "fraudulently and purposely concealed from her the nature of her injury." If the "fraudulent concealment" of the statute (Act No. 168, Pub. Acts 1905, being section 9729, 3 MICH. COMP. LAWS, as amended), were generalized as a "repeated wrong," which would give rise to a new cause of action arising on the occurrence of such a wrong, the bar of the statute of limitations would be removed, whether the wrong were an injury to land, as in the instant case; an injury to the person, as in the malpractice case, *Groendal* v. *Westrate* (*supra*); or an injury to reputation, as in the slander or libel cases, *Dick* v. *Northern Pac. Ry. Co.,* (1915), 86 Wash. 211. Cf. 18 MICH. L. REV. 679; 19 MICH. L. REV. 381.

EVIDENCE—CRIMINAL LAW—PROOF OF NONCONSENT BY CIRCUMSTANTIAL EVIDENCE.—In a prosecution for knowingly and unlawfully taking or killing the cattle of another, no direct evidence of the owner's nonconsent was offered though the owner was present at the trial. The defendant moved for a directed verdict on the ground of a lack of proof as to the nonconsent of the owner to the killing. *Held,* motion denied as there were facts from which the nonconsent could be inferred. *State* v. *Parry,* (N. Mex., 1920), 194 Pac. 864.

The crime in the principal case, like that of larceny, rests on the nonconsent of the owner to the taking or the killing, otherwise the act would be lawful. It is the lack of consent that renders the act unlawful. This nonconsent of the owner must be shown in order to obtain a conviction, for otherwise no larceny would be established, *Garcia* v. *State,* 26 Tex. 209. As to what kind of evidence is necessary to establish the nonconsent of the owner there is some conflict. An early English case, in a prosecution for coursing deer without the consent of the owner, held that it was necessary on the part of the prosecution to call the owner of the deer to prove that he did not give his consent to the defendant to course them. *Rex* v. *Rogers,* 2 Camp. 654. This doctrine has been entirely repudiated and rejected by later English decisions. *Rex* v. *Hazy,* 2 C. & P. 458; *Rex* v. *Allen,* 1 Moody C. C. 154. But that case became the foundation for the doctrine that circumstantial evidence as to the nonconsent may be resorted to only when direct evidence of the owner is not obtainable. This doctrine is asserted in PHILLIPS ON EVIDENCE, [4th Ed.] 635, and has been followed by a few states. *State* v. *Osborne,* 28 Ia. 9. At one time Nebraska and Wisconsin also asserted this doctrine. *Bubster* v. *State,* 33 Neb. 663; *State* v. *Morey,* 2 Wis. 495. But they have now

abandoned it for the doctrine that nonconsent may be shown by circumstantial evidence even where the owner is present. *Nixon* v. *State,* 89 Neb. 109; *Fowle* v. *State,* 47 Wis. 545. The Texas courts seem also to hold that direct evidence where obtainable must be produced. *Gomez* v. *State,* (Tex. Cr. App.), 206 S. W. 86. The doctrine thus asserted seems based on the so called "best evidence" rule. But there is no general principle that the best evidence must be produced in all cases. There are only a few definite exceptions where the best possible evidence is required. 2 WIGMORE'S EVIDENCE, § 1286; *Elliot* v. *Van Buren,* 33 Mich. 49. The present case is not one for testimonial preference. That direct evidence of the nonconsent of the owner in larceny is not required, but that, on the other hand, such nonconsent may be established circumstantially is well recognized by the weight of authority and reason. *People* v. *Jacks,* 76 Mich. 218; *McAdams* v. *State,* 23 Wyo. 294; *Filson* v. *Terr.,* 11 Okl. 351. There is no reason for requiring direct testimony by the owner of his nonconsent in these cases where nonconsent is an element of the crime. The court in the principal case rightly held that the presumption of innocence in favor of the defendant was always sufficient protection against an unjust conviction upon circumstantial evidence of nonconsent. The defense in such a situation might assert the well recognized general principle that non-production of evidence that naturally would be produced by an honest party permits the inference that its tenor is unfavorable to that party's cause. *Clifton* v. *U. S.,* 4 How. 247. So where the owner is not called by the prosecution to testify to his nonconsent, an inference is imputable that his testimony would be unfavorable to the prosecution, that if called he would admit consent. But where the witness is equally available to both parties, it would seem no inference could be allowed, particularly where the witness is actually in court,—*Crawford* v. *State,* 112 Ala. 1,—or that the inference would be available to both parties, the strength of the inference against either depending on circumstances. *Harriman* v. *Railroad,* 173 Mass. 28. In the principal case the inference could hardly be made use of by the defense for the owner as a witness was equally available to both parties;—to the defense to prove consent if such was the fact. In some cases this inference might, however, become most advantageous to the defense.

FRAUDS, STATUTE OF—GRANTOR'S ORAL AGREEMENT TO INCLUDE RESTRICTION CLAUSES IN DEEDS TO OTHER PERSONS VOID.—A subdivision was platted with the intention of making it a high-class residence section. The owner of the tract sold lots to plaintiffs subject to building restrictions contained in the deeds, and orally promised to place building restriction clauses in deeds to other persons. The defendant church purchased a lot without a restrictive clause, but with knowledge of the general plan. P now seeks to enjoin D from erecting a church on the lot. *Held,* that D, having notice of the plan was estopped from constructing the church on the lot. *Johnson* v. *Mt. Baker Park Presbyterian Church,* (Wash., 1920), 194 Pac. 536.

The defendant's contention was that plaintiff could not have any legal ground for enjoining the erection of church, unless he had an interest or easement in the lot, and that the only evidence of such interest was in the